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whose sole purpose was the repeal of Missouri's declared policy to maximize the capabilities of handicapped children. This last minute Senate Substitute for HB 2023 so caught wary legislators by surprise that they did not learn about the repeal of Missouri's maximizing policy until after they had voted for the bill which prompted sixty-six (66) members of the House who had voted for SSHB 2023 to sign a petition asking the Governor to veto it. The trial court further erred in failing to consider this evidence because it is relevant and admissible and discloses that legislators were fooled because the proscription found in Article III § 21 was violated.

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JURISDICTIONAL STATEMENT

Appellants appeal from the Findings of Fact, Conclusions of Law, and Judgment of the Circuit Court of Cole County declaring SSHB 2023 to have been passed in conformance with the Missouri Constitution (L.F. 127 - 137). Because this appeal concerns the facial constitutionality of a statute, jurisdiction is proper before the Supreme Court. See *Mo.Const.Art. V,* § 3*;* and *Asher v. Lombardi*, 877 S.W. 2d 628, 629 (Mo. banc 1994). Appellants brought an action in circuit court claiming that SSHB 2023 unconstitutionally diverged from the original purpose of HB 2023. Appellants alleged that the original purpose of HB 2023 was changed from dealing with the targeted intent of streamlining an appeal from a student's disciplinary hearing to the new and dramatically different purpose found in SSHB 2023, which was to repeal Missouri's special education maximizing standard. This change violated Article III, § 21 of the Missouri Constitution because the original purpose of HB 2023 had dramatically and substantially changed as amended by the Senate in SSHB 2023. Additionally, Appellants allege that SSHB 2023 was unconstitutionally passed because it violated Article III, § 23 in that it had neither a clear title nor only one subject.

Therefore, in light of the foregoing, this court has jurisdiction of this appeal from the Cole County Circuit Court.

STATEMENT OF FACTS

Amended Petition

On May 31, 2002, Appellants filed their amended petition for Declaratory Judgment and Injunctive Relief (L.F. 6). The amended petition contained two (2) counts.

Count I consisted of an allegation that HB 2023 violated Article III § 21 of the Missouri Constitution in that the amendments tacked on by the Senate committee changed the education policy of the state of Missouri towards the disabled, thus dramatically deviating from the original purpose of the bill which dealt with resolution conferencing (L.F. 8, 9). The amended petition stated that even the governor had conceded that this "legislation was approved without public hearing" (L.F. 9). The Appellants alleged that HB 2023 was amended in the Senate at the eleventh hour to dramatically and substantively change it from its original and narrow purpose of dealing with resolution conferences and appeals therefrom to a purpose affecting every aspect of Missouri's policy on special education (L.F. 9).

In Count II of the amended petition Appellants alleged that HB 2023 was unconstitutional in that it violated Article III § 23 in that its title declared that it related to "the appropriate educational placement of students" when in fact the sole purpose of SSHB 2023 was to change the special education policy in Missouri (L.F. 10).

Joint Stipulation of Facts

Upon the filing of the lawsuit the parties agreed to a Joint Stipulation of Facts (L.F. 108-112). They are as follows:

1. Jurisdiction is vested in the Cole County Circuit Court pursuant to § 527.010, RSMo., in that Petitioners sought declaratory judgment and injunctive relief regarding the constitutionality of recently enacted House Bill 2023 ("HB 2023").

2. Venue is proper in the Circuit Court of Cole County, Missouri, pursuant to § 508.010, RSMo., in that Petitioner Missouri Protection and Advocacy Services ("MOPAS") and Respondents can be found in Cole County.

3. Petitioner Ian McEuen is a student with disabilities in the Boone County School District, a district within the Western District Court of Appeals jurisdiction and presently subject to the maximization standard for assessing the sufficiency of special education services resulting from his Individual Education Program ("IEP").

4. Petitioner MOPAS is a non-profit, public interest law center designated by the Governor of the State of Missouri and authorized to pursue legal, administrative, and other appropriate remedies on behalf of individuals with disabilities pursuant to 42 U.S.C. 15043.

5. Respondent Missouri State Board of Education ("Board") is a governmental entity created under the Missouri Constitution, Article IX, § 2(a). Under the laws of Missouri, the Board is required to promulgate regulations concerning the standard for identifying children with handicaps. These regulations also concern the evaluation and reevaluation of children with handicaps before and during assignment, special education

programs, and standards for approving all special education programs established under § § 162.670 to 162.995, RSMo.

6. Respondent Missouri Department of Elementary and Secondary Education ("DESE") is an executive department of state government created and operating under Chapter 161, RSMo. Pursuant to Chapter 161, RSMo., DESE is headed by the Board and is the Board's agent in discharging its obligation to carry out the educational policies of the state relating to education.

7. Article III, § 21 of the Missouri Constitution states "no law shall be passed except by bill, and no bill shall be amended in its passage through either House so as to change its original purpose."

8. Article III, § 23 of the Missouri Constitution states "no bill shall contain more than one subject, which shall be clearly expressed in its title."

9. On May 13, 2002, the Western District Court of Appeals declared that Missouri statutes in effect on that date mandate schools to provide special education services designed to maximize the potential of students with disabilities. *Lagares v. Camdenton R-III School District*, 68 S.W. 3d 518 (Mo. App. at W.D. 2001).

10. According to the Missouri House and Senate joint bill tracking service, Representative Richard Franklin introduced and read for the first time on February 21, 2002, HB 2023. *(House Journal, p. 346).* (Exhibit A). HB 2023 attempted to amend § 162.961 and 162.962, and its title was "Relating to resolution conferences."

11. HB 2023 was read for the second time on the House floor February 25, 2002.

(House Journal, p. 356).

12. On March 7, 2002, HB 2023 was referred to the House Committee on Elementary and Secondary Education. That Committee held a hearing on HB 2023 on March 13, 2002. The Committee voted do pass by consent by a vote of 22-0. Testifying for the bill were the bill sponsor, Representative Richard Franklin, and DESE. There was no opposition voiced to the Committee.

13. After HB 2023 was reported do pass by consent (*House Journal, p. 627)*, perfected by consent (*House Journal, p. 751)*, and perfected and printed (*House Journal, p. 751)*, HB 2023 was read for a third time and passed by the Missouri House of Representatives on April 5, 2002, by a vote of 149-0 (*House Journal, p. 943)*. (Exhibit B). As passed by the House, the Bill was unchanged from its original form.

14. On that same day, April 5, 2002, HB 2023 was reported to the Senate and first read. (*Senate Journal, p. 733).*

15. On April 8, 2002, HB 2023 was read for a second time and referred to the Senate Committee on Education. (*Senate Journal, p. 748)*.

16. On April 18, 2002, the Senate Education Committee held an executive session where HB 2023 was discussed.

17. On May 10, 2002, Senate Substitute for HB 2023 was introduced, amending two new sections of law, both dealing with the educational policy of the State of Missouri. While the two section changes regarding discipline and resolution conferences remained, the Senate Substitute added changes to 162.670 and 162.675, RSMo. These subsequent

revisions changed Missouri's policy towards special education as well as the very definition of what special educations services are designed to achieve.

18. Senate Substitute for HB 2023 was adopted, read for a third time and passed by a vote of 27-2. (Ex. B).

19. On Friday, May 10, 2002, Senate Substitute for HB 2023 was reported to the House. (*House Journal, p. 1898).*

20. This new law adopts the federal standard in determining the sufficiency of special education services.

21. On May 13, 2002, the Monday of the last week of the legislative session, Senate Substitute for HB 2023 was adopted by the House 151-1. (*House Journal, p. 1947).* On that same day Senate Substitute for HB 2023 was truly agreed to and finally passed by the House of Representatives by a vote of 146-1. (*House Journal, p. 1948).*

22. Senate Substitute for HB 2023 was delivered to the Governor on May 14, 2002. (*House Journal, p. 2029).*

Circuit Court Decision

On November 21, 2002, the Cole County Circuit Court issued its Findings of Fact, Conclusions of Law, and Judgment "ruling that SSHB 2023 is constitutional as enacted in that SSHB 2023 does not violate either Article III, § 21 or Article III,§ 23 of the Missouri Constitution and dismisses Petitioners' Amended Petition with Prejudice" (L.F. 127-137). In its Findings of Fact, the trial court cited the first eighteen (18) paragraphs of the Joint Stipulation reached by the parties but omitted the final nine (9) paragraphs of the Jointly

Stipulated Facts (L.F. 127-130; and 111-112). Among the jointly stipulated facts omitted by the trial court were the following: ¶20) that the new law adopted the federal standard in determining the sufficiency of special education services; ¶ ¶19 and 21) that on Friday May 10, 2002, SSHB 2023 was reported to the House and on May 13, 2002, the Monday of the last week of the legislative session, SSHB 2023 was passed by the House of Representatives by a vote 146-1; ¶23) that shortly after the House adopted SSHB 2023, sixty-six (66) representatives signed a petition requesting the governor to veto the bill; and, ¶27) that upon signing the Bill governor Holden issued a statement which stated that "this legislation was approved without public hearing." (L.F. 111-112).

The essence of the trial court's conclusion is found in paragraph twenty-four (24) of its decision wherein it concludes that all the changes to SSHB 2023 are constitutional because they relate to the treatment of handicapped children in their educational environment and are in the same chapter, Chapter 162, RSMo. (L.F. 135). At no time does the trial court refer to or discuss the evidence placed before it by Appellants that sixty-six (66) house representatives signed a petition urging the governor to veto SSHB 2023, a bill they had voted for, because they did not know what was in it due to the manner in which it was amended and presented to them.

Appellants timely filed their notice of appeal to this court on December 4, 2002 (L.F. 5).

SUMMARY OF ARGUMENT[1]

This is a unique case. Normally, when a court reviews a claim that a statute is passed unconstitutionally it looks to the contents and title of the bill to determine whether it violated the original purpose provision of the Constitution or the clear title and single subject provision of the Constitution. In this case there is uncontroverted proof that the legislators were fooled by the dramatic and substantial change from HB 2023 to the last-minute amendments found in SSHB 2023. Sixty-six representatives who voted in the last week of the session for SSHB 2023 signed a Petition asking the Governor to veto it. These representatives did so because they did not know the original purpose of HB 2023 had been changed by SSHB 2023. Also, they were unaware of the effect of SSHB 2023 because the

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[1] This section, which comes after the Statement of Facts, but before the Argument, is included for the benefit of the court. It summarizes the argument of Appellants in this case. This section acts as a road map so that this court might more efficiently and effectively read and analyze the argument which follows. Although such a section is not expressly required by Rule 84.04, the undersigned believes that it is not proscribed. This section follows the requirement for briefs in Federal Appellate Courts. It is stated in Federal Rules of Appellate Procedure 28 (A) that there must be a section after the facts and before the argument which is a summary thereof and "which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument heading."

title was under-inclusive. There is proof before this court that legislators were fooled because constitutional provisions were violated.

Immediately below is a graph comparing HB 2023 to the last-minute amendments found in SSHB 2023. This graphic representation assists in showing how otherwise wary legislators thought they were voting for resolution conferences concerning students with disabilities and appeals therefrom when in fact they were voting to repeal an almost thirty year policy of maximizing the capabilities of students with disabilities.

[GRAPH ON NEXT PAGE]

HB 2023 Relating to Resolution Conferences February 21, 2002		SSHB 2023 Relating to Appropriate Educational Placement of Students May 10, 2002	
§ 162.961	Expedited hearing re: discipline of students with disabilities	§ 162.961	Same as HB 2023
§ 162.962	Scope of judicial review for appeal from administrative hearing pursuant to § 162.961	§ 162.962	Substantially the same as HB 2023
		§ 162.670	Repeals maximization standard for **all** disabled students
		§ 162.675	Repeals requirement that plans be designed to maximize capabilities of **all** disabled students.

Appellants bring this action believing that the Senate Substitute for HB 2023 was unconstitutionally passed. House Bill 2023 was two and one-half pages long and dealt with only two sections – 162.961 and 162.962, RSMo. Those two sections concern the discipline of students with disabilities and the rights of parents to challenge the discipline, and the scope of judicial review for an appeal therefrom.

A court finds the original purpose of a bill by determining what its effect would have been if passed in its original state. The original purpose of HB 2023 is to be found in the changes it makes to § 162.962. That section relates to the scope of judicial review for administrative appeals dealing with the provision of special education services to children with disabilities. When a parent of a child with disabilities disagrees with a school in regard to the provision of special education services he may request a due process hearing before a three (3) member due process hearing panel. Before HB 2023, an appeal from a due process hearing panel decision was to the circuit court in accordance with Chapter 536, RSMo. It is in § 536.140 that the scope of review is delineated. The changes HB 2023 makes to § 162.962 is to virtually eliminate the scope of review a circuit court has pursuant to § 536.140. If enacted, HB 2023 would have the effect of insulating a due process hearing panel decision from judicial review because a circuit court could no longer hear additional evidence; determine if the administrative panel had jurisdiction; determine whether the administrative panel acted with irregularity; issue orders of remand to the administrative panel; or determine if the administrative decision was unauthorized by law.

This original purpose of HB 2023 affects only a targeted and specific group of individuals: children with disabilities whose parents obtained a due process panel hearing and took an appeal therefrom. For that select group of individuals the scope of judicial review found in HB 2023 is far more limited than an appeal from other types of administrative hearings. It was months after HB 2023 was proposed, in the last week of the session, when the Senate Substitute for HB 2023 was first considered by the House of

Representatives. Two (2) new sections were added by the Senate Substitute. Those sections dealt with Missouri's thirty (30) year policy to maximize the capability of students with disabilities. Six (6) months earlier the Missouri Court of Appeals, Western District, ruled upon the meaning of Missouri's policy concerning the maximization of capabilities of students with disabilities, §162.670, and concluded that it meant what it said and that the legislature intended for there to be such a maximizing policy. This decision of the Missouri Appellate Court disagreed with the conclusion rendered earlier by the Eighth Circuit on the same statute.

The sole purpose of the Senate Substitute was to repeal this maximizing policy. The effect of SSHB 2023 was universal in that it affected every student with disabilities who attended public schools, whereas the original purpose of HB 2023 was to affect only those students with disabilities who took an appeal from a due process hearing panel decision.

Legislators who voted for SSHB 2023 did not know that the original purpose of HB 2023 had changed dramatically and substantively. They did not know that instead of voting on a different scope of judicial review on appeal from an administrative hearing, they were actually voting to repeal a declared policy of the state of Missouri which affected all children with special education needs attending public school.

Similarly, SSHB 2023 is constitutionally defective because its title was so underinclusive that it did not put wary legislators on notice of what they were voting for. The title to the Senate Substitute for HB 2023 states only that it relates "to the appropriate educational placement of students" (L.F. 80). The provisions in HB 2023 dealt with the

placement of students with disabilities because it concerned disagreements between schools and parents about where the disabled child should be educated. But the concept of "placement" is not to be found in the two (2) sections added by the Senate Substitute to HB 2023. The sole purpose of the changes made by the Senate Substitute was to repeal Missouri's declared policy to maximize the capabilities of students with disabilities. The sole purpose of the Senate Substitute had nothing to do with placement, in direct and stark contrast to what its title indicates. Because questions of placement have nothing to do with questions of policy, the title to SSHB 2023 is under-inclusive and is a violation of the Missouri Constitution because it did not fairly apprise wary legislators of what the bill contained.

As noted, when the legislators learned that they had voted to repeal maximization they urged the Governor to veto a law they had voted for. This fact is relevant and admissible and was not considered by the trial court. The proof here is not that of legislators testifying before a trial court long after the fact. Here the proof consists of legislators reacting immediately in the last days of the session urging the Governor to veto legislation they had voted for. This is not evidence garnered after litigation has been filed and in support of it; rather, this is the action of many representatives who felt fooled by the "crafty maneuverings" of SSHB 2023 and wanted to right a wrong.

In this case, this court has before it not just the arguments of counsel that the original purpose of HB 2023 so dramatically changed that even wary legislators could have been fooled, or that the title was so under-inclusive that even wary legislators did not know

what they were voting for, but actual and non-speculative proof consisting of the petition containing the signatures of the legislators.

POINTS RELIED ON

I

The trial court erred in granting Summary Judgment to Respondents and denying it to Appellants when it concluded that Senate Substitute for House Bill 2023 was constitutionally passed because SSHB 2023 was passed in violation of Article III § 21 of the Missouri Constitution in that the original purpose of HB 2023 was dramatically and substantively changed by the last-minute SSHB 2023 so that legislators were unaware of what they were voting for. The original purpose of HB 2023 was to reduce the scope of judicial review of decisions from administrative hearing panels concerning special education students. In the last week of the session that original purpose was unconstitutionally transmogrified by SSHB 2023 whose sole purpose was the repeal of Missouri's declared policy to maximize the capabilities of handicapped children. This last minute Senate Substitute for HB 2023 so caught wary legislators by surprise that they did not learn about the repeal of Missouri's maximizing policy until after they had voted for the bill which prompted sixty-six (66) members of the House who had voted for SSHB 2023 to sign a petition asking the Governor to veto it. The trial court further erred in failing to consider this evidence because it is relevant and admissible and discloses that legislators were fooled because the proscription found in Article III § 21 was violated.

II

The trial court erred in granting Summary Judgment to Respondents and denying it to Appellants when it concluded that Senate Substitute for House Bill 2023 was constitutionally passed. The trial court erred because SSHB 2023 was passed in violation of Article III § 23 of the Missouri Constitution in that the title thereto was under-inclusive in that it did not fairly apprise legislators that the bill repealed Missouri's declared policy to maximize the capabilities of handicapped students. The title to SSHB 2023 states only that it relates "to the appropriate educational placement of students." Contrary to the use of the word "placement" in its title, the sole purpose of SSHB 2023 had nothing to do with placement. Its sole purpose was to repeal Missouri's declared policy to maximize the capabilities of handicapped students. The title of SSHB 2023 refers to the locale where services are

to be delivered when in fact the declared policy of the state, which was repealed by SSHB 2023, relates exclusively to the services to be delivered to handicapped students regardless of locale. Because the proscription found in Article III § 23 was violated, wary legislators did not learn that they had voted for the repeal of Missouri's maximizing policy until afterwards, prompting sixty-six (66) members of the House to sign a petition asking the Governor to veto SSHB 2023. The trial court further erred in failing to consider this evidence because it is relevant and admissible and discloses that legislators were fooled because the proscription found in Article III § 23 was violated.

STANDARD OF REVIEW

At issue in this case is whether SSHB 2023 was passed in accordance with the

Missouri Constitution. The parties filed motions for Summary Judgment. The parties stipulated to the facts. The trial court granted Summary Judgment to Respondents upon finding that SSHB 2023 was passed constitutionally; concomitantly, the trial court denied the motion of Appellants for Summary Judgment.

The standard of review here is that applicable to a grant of Summary Judgment. *Quaker Oats v. Stanton,* 96 S.W.3d 133, 136-137 (Mo.App. W.D. 2003). This is true even though the case was submitted to the trial court upon a Stipulation of Facts. *Id.* Even if the parties in cross motions for Summary Judgment agree that all facts are undisputed, it does not convert the proceeding to a non-jury trial under Rule 73.01 and thus the standard of review is not that as found under *Murphey v. Carron*, 536 S.W.2d 30, 32 (Mo.Banc 1976). *Id.*

The standard of review for an appeal from a grant of Summary Judgment is controlled by *ITT Commercial Finance v. Mid-America Marine Supply*, 854 S.W.2d 371, 380 (Mo.Banc 1993). Under *ITT,* appellate review of a grant of Summary Judgment is essentially de novo. The criteria by which this court ascertains the propriety of Summary Judgment are the same as those that a trial court uses initially. *Id.* The appellate court does not defer to the trial court's order granting Summary Judgment because the initial judgment of the trial court is based on the record submitted and amounts to a decision on a question of law. *Id.* The moving party has a burden of establishing a right to judgment as a matter of law and that no genuine issue of material facts exist. *Id* at 378. Because the parties have stipulated to the facts, the only question before this court "is whether the trial court drew

the proper legal conclusion from the facts." *Perry State Bank v. Farmers Alliance Mutual Insurance*, 953 S.W.2d 155,157 (Mo.App. W.D. 1997).

ARGUMENT

POINT RELIED ON I

The trial court erred in granting Summary Judgment to Respondents and denying it to Appellants when it concluded that Senate Substitute for House Bill 2023 was constitutionally passed because SSHB 2023 was passed in violation of Article III § 21 of the Missouri Constitution in that the original purpose of HB 2023 was dramatically and substantively changed by the last-minute SSHB 2023 so that legislators were unaware of what they were voting for. The original purpose of HB 2023 was to reduce the scope of judicial review of decisions from administrative hearing panels concerning special education students. In the last week of the session that original purpose was unconstitutionally transmogrified by SSHB 2023 whose sole purpose was the repeal of Missouri's declared policy to maximize the capabilities of handicapped children. This last minute Senate Substitute for HB 2023 so caught wary legislators by surprise that they did not learn about the repeal of Missouri's maximizing policy until after they had voted for the bill which prompted sixty-six (66) members of the House who had voted for SSHB 2023 to sign a petition asking the Governor to veto it. The trial court further erred in failing to consider this evidence because it is relevant and admissible and discloses that legislators were fooled because the proscription found in Article III § 21 was violated.

In Count I of their petition, Appellants assert that SSHB 2023 was unconstitutionally passed because it violated Article III § 21 of the Missouri Constitution (L.F. 4). Article III § 21 forbids the change of the original purpose of a bill in its passage through either House. Appellants assert that SSHB 2023 violates Article III § 21 because amendments tacked on by the Senate Committee changed the special education policy for the entire state of Missouri when the original purpose of HB 2023 was only to clarify when an expedited due process hearing could be requested by a parent, and the scope of judicial review on appeal therefrom.

The structure for analyzing an original purpose challenge to the constitutionality of a statute is to be found in this court's decision in *Allied Mutual Insurance v. Bell*, 185 S.W. 2d 4 (Mo 1945).

Allied Mutual is the lodestar by which we can establish a framework to analyze challenges based on original purpose. The Allied Mutual Insurance Corporation sought a declaratory judgment seeking to have a tax law declared unconstitutional with the result that the Corporation would not be indebted to the state of Missouri for the tax provided in that law. *Id* at 93-894. Allied Mutual contended that the law was unconstitutional because the bill's original purpose was changed in its passage through the House of Representatives and that the title was not clearly stated.

This court, in reviewing the original purpose contention made by Allied Mutual stated that original purpose "means the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated." *Id.* at 896. This

court then stated that the effect of the bill had it been passed as originally introduced is to be given weight in determining its general purpose. This court then found the tax bill unconstitutional concluding that the effect of the bill had it been passed as originally introduced was different from the effect of the law ultimately enacted. *Id.*

Using *Allied Mutual* as the lodestar, we now look to HB 2023 and establish its original purpose by determining the effect it would have had if passed.

House Bill 2023 was entitled an act "to repeal §§ 162.961 and 162.962, RSMo., and to enact in lieu thereof two new sections relating to resolution conferences." (L.F. 77). A perusal of HB 2023 establishes that only minor changes were made to § 162.961. The changes relate to the terminology utilized in regard to discipline, and to whether a disciplined child with a disability shall continue to be allowed "progress in" the general education curriculum.

It is clear from the foregoing that the effect of HB 2023 in regard to § 162.961 is of a technical nature and that the impact is minor. The same is not true of the second section that was amended. In the only other provision addressed by HB 2023, § 162.962, the change was dramatic and the effect is readily apparent. As will be detailed anon, the effect of HB 2023 on § 162.962 was to dramatically limit the scope of judicial review for appeals of administrative hearings concerning children with disabilities and their special education needs. The changes made by HB 2023 to §162.962 preclude the trial court from hearing new evidence, for any reason, or for inquiring into any irregularities that may have occurred at the administrative hearing, or even to review whether the jurisdiction of the

administrative tribune was within the statutory mandate. The effect of HB 2023 was to insulate from judicial review the decision of an administrative tribunal concerning the special education of a handicapped child.

The original § 162.962 is entitled: "Decision subject to review, when procedure." The entirety of the section reads as follows: "In a case where review of the hearing panel's decision is sought by a school district or a parent or guardian, either party may appeal as provided in Chapter 536, RSMo." The hearing panel mentioned refers to "a due process hearing by the state Board of Education with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education of the child." § 162.961.3. Thus, if a parent of a child with learning disabilities and special education needs disagrees with the school in regard to the free appropriate education provided to the child, the parent has a right to a "due process hearing" before a three (3) member panel.

Pursuant to a hearing held before a three (3) member due process hearing panel under the aegis of § 162.961, review thereof shall be sought as provided in § 536.140. Before HB 2023, appeals from the decision of "due process hearing panels" were as provided in Chapter 536, RSMo. The changes made by HB 2023 to § 162.962 are dramatic in that they substantively change the power of a Circuit Court hearing said appeal. Instead of an appeal being pursuant to the processes of Chapter 536, the provision in HB 2023 for such an appeal is set out as follows:

"162.962. In a case where review of the hearing panel's decision is sought by a school district or a parent or guardian, either party may appeal as [provided in chapter 536, RSMo.] **follows:**

"(1) The court shall hear the case without a jury and shall hear it upon the petition and record filed as provided in sections 162.950 to 162.961;

"(2) The inquiry may extend to a determination of whether the action of the agency:

"(a) Is in violation of constitutional provisions;

"(b) Is unsupported by competent and substantial evidence upon the entire "record;

"(c) Is made upon unlawful procedure or without a fair trial;

"(d) Is arbitrary, capricious, or unreasonable; or

"(3) Involves an abuse of discretion." (L.F. 79).

These changes (in bold above) are to be contrasted with § 536.140, the procedure that had been followed regarding appeals from due process hearings. The original § 536.140 is set out below in strikeout (deleted provisions) and bold (added provisions) to show what provisions no longer are applicable on appeal from due process hearings, pursuant to HB 2023.

"536.140. Scope of judicial review – judgment – appeals**.** – 1. The court shall hear the case without a jury and~~, except as otherwise provided in subsection 4,~~ shall hear

it upon the petition and record filed as ~~aforesaid.~~ **provided in sections 162.950 to 162.961;**

"2. The inquiry may extend to a determination of whether the action of the agency

"(1) Is in violation of constitutional provisions;

"~~(2) Is in excess of the statutory authority or jurisdiction of the agency;~~

"(3) Is unsupported by competent and substantial evidence upon the whole record;

~~"(4) Is, for any other reason, unauthorized by law;~~

"(5) Is made upon unlawful procedure or without a fair trial;

"(6) Is arbitrary, capricious or unreasonable;

"(7) Involves an abuse of discretion.

~~"The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to sections 536.100 to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this subsection; provided, however, that nothing herein contained shall in any way change or affect the provisions of sections 311.690 and 311.700, RSMo.~~

"~~3. Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the court may~~

weigh the evidence for itself and determine the facts accordingly. The law applied by the agency as aforesaid may include the agency's own rules. In making such determination the court shall give due weight to the opportunity of the agency to observe the witnesses, and to the expertness and experience of the particular agency.

"4. Wherever under subsection 3 or otherwise the court is entitled to weigh the evidence and determine the facts for itself, the court may hear and consider additional evidence if the court finds that such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency. Wherever the court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that there is competent and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the agency, the court may remand the case to the agency with directions to reconsider the same in the light of such evidence. The court may in any case hear and consider evidence of alleged irregularities in procedure or of unfairness by the agency, not shown in the record.

"5. The court shall render judgment affirming, reversing, or modifying the agency's order, and may order the reconsideration of the case in the light of the court's opinion and judgment, and may order the agency to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in the agency.

"6. Appeals may be taken from the judgment of the court as in other civil

~~cases."~~

The foregoing establishes that little is left of § 536.140 in regard to appeals from due process hearings. No longer may a circuit court inquire into whether the due process hearing panel acted beyond its statutory authority or its jurisdiction. No longer may a circuit court determine whether the decision was unauthorized by law. No longer on an appeal from a due process hearing may the circuit court weigh the evidence for itself and determine the facts accordingly when the decision reviewed does not involve the exercise of administrative discretion in light of the facts. No longer may a circuit court consider additional evidence even if the court finds said evidence could not have been produced at the hearing or was improperly excluded by the due process hearing panel. No longer may the circuit court remand a case to the due process hearing panel with directions to reconsider its decision in light of evidence it improperly excluded. No longer may a circuit court hear and consider evidence of alleged irregularities in procedure or of an unfairness by the due process hearing panel not shown on the record. No longer may a circuit court enter an order requiring the due process hearing panel to take action that the court may require. Indeed, HB 2023, when it changed § 162.962 to gut § 536.140, even eliminated the provision that appeals may be taken from the judgment of the circuit court as in other civil cases.

There can be no question what the original purpose of HB 2023 was when the effects of the changes it made are brought to light. The effect of the gutting of § 536.140 by HB 2023 is to insulate due process hearing panel decisions from judicial scrutiny.

This was the effect of HB 2023 and axiomatically its original purpose. The Senate Substitute for HB 2023 dramatically and substantively changed the original purpose of HB 2023 and in doing so fooled members of the House in exactly the manner proscribed by Article III § 21 of the Missouri Constitution.

The Senate Substitute for HB 2023 was brought before the House of Representatives for the first time in the last week of the session. (L.F. 111). As the Governor later stated when signing the bill, there was no public hearing concerning Senate Substitute for HB 2023 (L.F. 87). The Senate Substitute for HB 2023 changed Missouri's special education policy for children with disabilities that had been on the books for thirty (30) years. The Senate Substitute for HB 2023 lowered the standard for the provision of special education from one requiring that students with disabilities have their capabilities maximized to one of which required only a minimal level of education.

The Senate Substitute for HB 2023 had the effect of gutting § § 162.670 and 162.675, RSMo. It was formerly stated in § 162.670 that it is declared to be the policy of the state of Missouri to provide to all handicapped and severely handicapped children "special education services sufficient to meet the needs and maximize the capabilities of handicapped and severely handicapped children." The definition of special education services found in § 162.675 stated that said services are "programs designed to meet the needs and maximize the capabilities of handicapped or severely handicapped children ...."

The Senate Substitute for HB 2023 repeals this maximizing standard and replaces it with the federal minimizing standard. Thus, in SSHB 2023 the maximizing language in § 162.670 is eliminated and in lieu thereof language is inserted declaring that it is the

policy of the state to provide only a free appropriate public education consistent with federal law (L.F. 80). Similarly, the definition found for special education services in § 162.675 (4) is changed in SSHB 2023 to eliminate the maximization standard (L.F. 81).

The original purpose of HB 2023 was to insulate the decision of a due process hearing panel from the full scope of judicial review found in appeals from other administrative actions. This original purpose was changed in a substantive way when the Senate Substitute to HB 2023 repealed Missouri's maximization policy and instituted the minimal federal standard. The repeal of this policy affected every child receiving special education services. The original purpose was changed dramatically not only in substance but in scope. The scope of HB 2023 affected only participants in due process hearings who were adversely affected by a decision therefrom and who thereafter took an appeal to circuit court. In stark contrast, the Senate Substitute for HB 2023 affected every child in Missouri receiving special education services.

The reason HB 2023 was amended in the last week of the session and presented to the House of Representatives in a fashion to fool the elected officials was because its real purpose was to change Missouri's maximization policy. The reason this policy was sought to be changed was because only a few months earlier the Missouri Court of Appeals, Western District, had issued a ruling declaring that § 162.670 meant what it said, thereby disagreeing with a previous interpretation of the Eighth Circuit.

Federal courts had concluded that federal law does not require schools either to maximize a student's potential or provide the best possible education at public expense. *Fort Zumwalt v. Clynes*, 119 F.3d 607, 612 (8th Cir. 1997). Under the federal law, a public

school is required only to provide sufficient specialized services so that the student benefits from his education. *Id.* It was in *Clynes* that the Eighth Circuit listed what an educational benefit would consist of: if a student was making progress, as evinced by passing marks and grade promotion, that would be sufficient. *Id.* at 613. The Eighth Circuit in *Clynes* further found that as long as a student was benefitting from his education, as evinced from receiving passing grades and promotion to the next grade level, it was up to the school to determine the appropriate educational methodology. *Id.* at 614.

Because the Eighth Circuit had set the bar so low, it was easy for schools to establish under federal law that they had provided specialized education that was of some benefit to a student with disabilities. Schools routinely prevailed in litigation concerning whether they satisfied the requirements of the federal law. Many parents felt that this low standard was tantamount to no standard at all. Thus, they turned to Missouri's law which required that schools design plans to maximize the capabilities of handicapped children. §§162.670 to 162.995, RSMo.

When the Eighth Circuit was squarely presented with the question of whether Missouri had adopted a higher standard than that found in the federal law, it concluded that Missouri had not. *Gill v. Columbia 93 School District*, 217 F.3d 1027 (8th Cir. 2000).

Parents of children with disabilities who require special education services believed that the Eighth Circuit erred fundamentally in its construction of Missouri law concerning the maximizing standard. Because federal cases interpreting Missouri law are persuasive,

but not binding, parents of children with special education needs sought to have Missouri courts interpret Missouri's maximizing law, which they contended set a higher standard than that found in the federal law. *See Wentz v. Indus. Automotion*, 847 S.W.2d 877, 880 n. 2 (Mo. App. 1992). A decision issued by the Western District of Missouri Court of Appeals on December 18, 2001, established that the legislature of Missouri intended that schools design plans to maximize the capabilities of children with special education needs, and that the Eighth Circuit erred in its construction of Missouri law.

In *Lagares v. Camdenton R-III School District*, 68 S.W.3d 518 (Mo. App. at W.D. 2001), the court found that Missouri's policy is to provide special education services sufficient to meet the needs and increase to the highest degree of the capabilities of handicapped children. *Id* at 525-529. In contrast, the standard set by the IDEA is that the special education services be useful to, or aid, advance, or improve handicapped children. *Id*. Missouri's maximizing standard for determining the sufficiency of special education services for disabled or handicapped children is higher than the standard set by the IDEA. *Id.*

Within months of this decision a repeal of the maximizing standard was obtained without honest and open debate. When the representatives learned the true nature of the Senate Substitute HB 2023 they acted. Sixty-six representatives of the House who had voted for the Senate Substitute for HB 2023 signed a petition requesting the Governor to veto it. (L.F. 84-85). It is extraordinary that legislators publicly admit that they did not know what they were voting for. It is extraordinary for legislators who voted for a bill to ask the Governor to veto it. That the representatives felt misled in regard to SSHB 2023

may be found in the letter of Representative Bray dated May 17, 2002, to the Governor. (L.F. 86). The letter states, in full, as follows:

> "I am writing to urge you to veto Senate Substitute for House Bill 2023. This bill effectively removes the challenge and the opportunity for students with special needs to reach their maximum potential.
>
> This Senate Substitute was craftily maneuvered onto House Bill 2023 after it passed the House and the committee process in the Senate. Such an important decision involving the education of our children deserves to be considered through the committee process and not tacked on as a Senate Substitute. Had I known this Substitute was taking away maximized standards for special needs children, I never would have voted for it.
>
> The Department of Elementary and Secondary Education would have us believe that the maximum standard for special students in our law is higher than the standards for students in regular education and that by removing the maximum standard for special needs students we will be leveling the playing field for all students. However, this is simply not the case. The Show-Me-Standards established to implement the Outstanding Schools Act, says that 'schools need to establish high expectations that will challenge all students to reach their maximum potential.'
>
> Sadly, I do not have the opportunity to correct my vote. But, I ask you to remember back to your State of the State Address when you championed the cause of quality education for all our children. You said, 'We should not

rest until all our students are performing at their maximum potential.' I urge you to veto this bill."

The Governor announced in his statement that SSHB 2023 was never subject to public hearing. "While I understand the distress of opponents to this legislation about the manner in which this legislation was approved **without public hearing** I believe after reviewing the provisions that the benefits of the measure outweigh any potential problems." (L.F. 87; emphasis added). When the Governor states that the bill was passed without public hearing, what he means is that the purpose of the bill as changed by SSHB 2023 was never given a public forum. In fact, both the House and Senate Committees held hearings on the original HB 2023 and made no changes to the bill. The public had an opportunity to comment at those hearings. The conclusion to be drawn from Governor Holden's statement is that the purpose of the original HB 2023 was changed by SSHB 2023, effectively nullifying the public hearings held on the original bill, all in violation of Article III, § 21.

The original purpose of HB 2023 not only was subverted and changed, a new purpose was tacked on to it by a "crafty maneuver," which misled the legislators. The new purpose of the SSHB 2023 was never subject to public debate.

In *Allied Mutual Insurance Company v. Bell*, 185 S.W.2d 4 (Mo. 1945) this court was met at the outset with an objection from the proponents of the bill arguing that no member of either House objected when the bill was considered and passed. *Id.* at 895. This court responded as follows:

"The failure to make an objection or to note a written protest to the

> change in the purpose of House Bill No. 2081 in the case at bar is held persuasive only in indicating the legislators believed the bill as considered and passed did not make a change in existing law, except that change which the bill would have effected as originally introduced." *Id.* at 899.

In the instant case, the legislators also believed the bill as considered and passed did not make any change to the existing law, except that change which the original HB 2023 contained.

This court in *Allied Mutual Insurance* further noted the statement of the Governor upon signing the bill. Thus, as this court considered the statement of the Governor in reviewing the constitutionality of that bill, it may now take into consideration the Governor's statement in this case to the effect that the legislation was approved "without public hearing." It is the position of Appellants that there was no public hearing because the sponsors of SSHB 2023 did not want either their colleagues or the public to know that the original purpose of HB 2023 had changed.

As noted by this court in *Cardinal Glennon and Children's Hospital v. Missouri*, 68 S.W.3d 412, 416 (Mo. banc 2002), the limitation in the Missouri Constitution that no bill shall be so amended in its passage through either House so to change its original purpose serves to facilitate orderly procedure, avoid surprise, and prevent logrolling, where several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage.

In *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101(Mo.banc. 1994), this court stated that the constitutional provision at issue here "serves to defeat surprise within

the legislative process. It prohibits a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of the pending bill." In *National Solid Waste Management v. Director of the Department of Natural Resources*, 964 S.W.2d 818, 820 (Mo.banc. 1998), this court stated that the circumstances surrounding the passage of SB 60 are exactly those to which these constitutional limitations are addressed. "The section pertaining to hazardous waste management was part of a last-minute amendment about which even the most wary legislators could hardly have given their considered attention and about which concerned citizens likely had no input."

In its judgment, the trial court seemed to place great reliance upon the fact that the additions to HB 2023 found in the Senate Substitute related to the same chapter as the original bill (L.F. 133). Since all sections in the Senate Substitute for HB 2023 are found in the same Chapter dealing with special education the trial court concluded that the original purpose provision of the Missouri Constitution could not have been violated. Appellants disagree.

The test of whether the original purpose provision of the Constitution has been violated is whether wary legislators would have been surprised by the inclusion of the amendments and whether the amendments were germane to the original purpose of the bill as determined by its effect had it been passed in its original form. There is no magic talisman in regard to original purpose analysis, as the trial court implies, by simply looking through the statutes affected and determining whether they are in the same Chapter. The question is whether the amendments, added here at the last minute, have any relationship to

the original legislation or whether these amendments are so substantially different that wary legislators were surprised to learn their real purpose after they voted.

In this case, real legislators were really fooled because a last minute amendment to HB 2023 transmogrified it from a specifically targeted bill to one with universal scope. Real legislators were really fooled and asked the Governor to veto a bill they had voted for because the means used to amend HB 2023 violated constitutional provisions designed to prevent the very evils at work here.

POINT RELIED ON II

The trial court erred in granting Summary Judgment to Respondents and denying it to Appellants when it concluded that Senate Substitute for House Bill 2023 was constitutionally passed. The trial court erred because SSHB 2023 was passed in violation of Article III § 23 of the Missouri Constitution in that the title thereto was under-inclusive in that it did not fairly apprise legislators that the bill repealed Missouri's declared policy to maximize the capabilities of handicapped students. The title to SSHB 2023 states only that it relates "to the appropriate educational placement of students." Contrary to the use of the word "placement" in its title, the sole purpose of SSHB 2023 had nothing to do with placement. Its sole purpose was to repeal Missouri's declared policy to maximize the capabilities of handicapped students. The title of SSHB 2023 refers to the locale where services are to be delivered when in fact the declared policy of the state, which was repealed by SSHB 2023, relates exclusively to the services to be delivered to handicapped students regardless of locale. Because the proscription found in Article III § 23 was violated, wary legislators did not learn that they had voted for the repeal of Missouri's maximizing policy until afterwards, prompting sixty-six (66) members of the House to sign a petition asking the Governor to veto SSHB 2023. The trial court further erred in failing to consider this evidence because it is relevant and admissible and discloses that legislators were fooled because the proscription found in Article III § 23 was violated.

In Count II of their Amended Petition, Appellants assert that SSHB 2023 was unconstitutionally passed because it violated Article III, § 23 of the Missouri Constitution which states: "No bill shall contain more than one subject which shall be clearly expressed in its title."

The title of the original HB 2023 was: "To repeal §§ 162.961 and 162.962, RSMo., and to enact in lieu thereof two new sections relating to resolution conferences." Thus, the original HB 2023, by its title, dealt with resolution conferences. By its title, the original HB 2023 did not deal with the entirety of Chapter 162, RSMo. The resolution conferences mentioned in § 162.961.1 are authorized by § 162.950, RSMo. The resolution conferences discussed in § 162.950 concern disagreements between parents of disabled children and school districts regarding, inter alia, the recommended assignment, change in assignment, or denial of assignment of a child to a class or program provided under sections dealing with special education. As discussed in Point Relied On I, the amendments to §§ 162.961 and 162.962, which were the subject of the original HB 2023, dealt with a change of placement of a child with disabilities being disciplined, the resulting expedited administrative hearing and the scope of judicial review upon any appeal therefrom.

The Senate Substitute for HB 2023 contains this title: "To repeal §§ 162.670, 162.675, 162.961 and 162.962, RSMo., and to enact in lieu thereof four new sections relating to the appropriate educational placement of students." It may be argued that the change in title is not misleading as it relates to the sections originally contained in HB 2023, §§ 162.961 and 162.962, because those sections deal with the placement of a child with disabilities who has been disciplined. However, the titles of the original HB 2023 and

the Senate Substitute for HB 2023 give no indication that a new and separate subject was added.

This new and separate subject is the repeal of the State policy declaring that it is the goal of Missouri's system of gratuitous education to provide special education services sufficient to meet the needs and to maximize to the highest degree the capabilities of handicapped and severely handicapped children. Clearly, a change in placement due to the discipline of a disabled child deals with "appropriate educational placement," and a limited group of students. On the other hand, the repeal of the State's policy and goal to educate **all** of the special education students to the highest degree is a completely different subject.

In order to violate § 23, "the subject may be too broad and amorphous, or so restrictive and under-inclusive that some provisions fall outside it." *Missouri State Medical Association v. Missouri Department of Health*, 39 S.W.2d 837, 841 (Mo.banc. 2001). In the instant case, the title of Senate Substitute for HB 2023 violates § 23 in that it is under-inclusive. The title puts legislators on notice only that the Senate Substitute to HB 2023 deals with the "appropriate educational placement" of students, not whether the policy of the State of Missouri in regard to **all** students who need special education services is changed from a maximizing to a minimizing standard.

The rule for determining whether a title is under-inclusive is "where the title of an act descends to particulars and details, the act must conform to the title as thus limited by the particulars and details." *National Solid Waste Management v. Director of the Department of Natural Resources*, 964 S.W.2d 818, 820-821 (Mo.banc.. 1998).

Furthermore, "the title may omit particular details of the bill, so long as neither the legislation nor the public is misled . . .. The bill as enacted is the only version relevant to the clear title requirement." *Missouri State Medical Association v. Missouri Department of Health*, 39 S.W.3d 837, 841 (Mo.banc.. 2001).

In *National Solid Waste Management*, 964 S.W.2d 818 at 820, this court stated, in declaring a bill unconstitutional, that: "The section pertaining to hazardous waste management was part of a last-minute amendment about which even the most wary legislators could hardly have given their considered attention and about which concerned citizens likely had no input." That is exactly what happened in the instant case.

The last-minute amendment occurred in the last week of the session. The Petition signed by sixty-six of the representatives who voted for the bill urging the Governor to veto SSHB 2023, and a letter from Representative Bray, established beyond cavil that even wary legislators were unaware of what was in SSHB 2023. The statement of the Governor upon signing SSHB 2023 establishes that it was passed without public hearing, thus establishing that the repeal of maximization was an act in which concerned citizens had no voice. The purpose of § 23 was to facilitate orderly procedure, and avoid surprise.

In *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo.banc.. 1994), this court considered legislation ultimately found to violate the "one subject" provision of § 23. This court said there that "[t]o the extent the bill's original purpose is properly expressed in the title to the bill we need not look beyond the title to determine the bill's subject." The subject of Senate Substitute for HB 2023 is that "relating to the appropriate educational placement of students." The subject of HB 2023 is properly expressed in the title of the

bill. It is legislation dealing with the appropriate placement of students. The title is specific and cannot include subjects dealing with policies and goals set by the State of Missouri concerning the education of **all** disabled children who need special education services.

That SSHB 2023 should be declared unconstitutional is supported by a recent case emanating from this court. *Home Builders Association of Greater St. Louis v. State of Missouri*, 75 S.W.3d 267 (Mo.banc.. 2002). In that case the trial court granted summary judgment, finding that the bill at issue was passed unconstitutionally. This court affirmed. In doing so, this court stated that the purpose of the clear title requirement was to prevent fraudulent, misleading and improper legislation, by providing that the title should indicate in a general way the kind of legislation that is being enacted. *Id.* at 269. Requiring bill titles to be clear is thus a way of keeping individual members of the legislature and the public fairly apprised of the subject matter of pending laws. *Id.*

In the instant case both members of the legislature and the public were actually surprised by the subject matter of Senate Substitute for HB 2023. The very existence of the Petition from sixty-six representatives urging the Governor to veto SSHB 2023, and the individual letter of Representative Bray, established that the title of SSHB 2023 was not sufficiently clear so as to apprise wary legislators and the public of the contents therein.

Thus, the trial court erred prejudicially when it concluded that the title of SSHB 2023, "relating to the appropriate educational placement of students," was broad enough to put legislators on notice that the thirty (30) year policy of the state to maximize the capabilities of students with special education needs had been repealed. In ¶24 of the trial

court's Finding of Fact, Conclusions of Law, and Judgment it states that all "the changes in SSHB 2023 relate to the treatment of handicapped children in their educational environment." That broad statement may in its most general terms be accurate. The insuperable difficulty with the trial court's statement is that it does not accurately reflect the words of the title. The words of the title of SSHB 2023 are "appropriate educational placement of students." The critical word is "placement." The change made in SSHB 2023 is the repeal of the declared policy of the state of Missouri to maximize to the highest degree the capability of students who are disabled. That does not relate to their placement. Such a declared policy relates to the type of services to be provided to the special education student regardless of his placement. The policy of the state of Missouri, prior to SSHB 2023, to maximize his potential will relate to what kind of programs and services he receives. Will he receive a one-on-one aide? Will he receive an Orton-Gillingham program of instruction to help him overcome his dyslexia? Will he receive a Lovaas-type program to cure him of his autism? These are the types of questions that are encountered when determining if the declared policy to maximize capabilities is being implemented.

A maximizing program has to do with the type, level, and intensity of services provided, not the locale for the provision of those services.

Thus, the trial court failed to distinguish between the types of services mandated by a maximizing policy and the locale where those services are to be delivered. The word "placement" specifically and narrowly confines the inquiry to the physical locale of the services to be provided to special education students. By definition, a policy refers to the types of services to be delivered regardless of location.

It is therefore not possible that by the use of the word "placement" wary legislators could have been on notice that in fact the placement of students was not the subject of the bill, rather the policy of the state of Missouri to maximize capabilities was the subject. Thus, when the trial court states that the changes in SSHB 2023 relate to the treatment of handicapped children in their educational environment, it is correct. The reversible error occurs because the trial court did not understand that while policy relates to the treatment of handicapped children in their educational environment, the word "placement" denotes the locale of said services. The title of SSHB 2023 confused not only the legislators but the trial court as well.

Consequently, for the foregoing reasons, SSHB 2023 violated the proscription found in Article III § 23 of the Missouri Constitution.

CONCLUSION

WHEREFORE, in light of all the foregoing, Appellants respectfully request that this court declare that SSHB 2023 was passed unconstitutionally, because: (1) it violated the original purpose provision of Article III, § 21 of the Missouri Constitution; and (2) it violated Article III, § 23 of the Missouri Constitution in that its title did not clearly reflect what was contained within the bill. Appellants state that they have no objection to this court severing from the unconstitutional SSHB 2023 those sections which were the subject of the original HB 2023 – § § 162.961 and 162.962. Appellants further request that upon finding that the SSHB 2023 was unconstitutionally passed this court award to them their costs, expenses, attorney's fees, and issue other orders that are meet in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed first-class, postage prepaid, to the attorney of record at the address set out below, on this 31st day of March, 2003.

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The undersigned certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 11,430 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus free.

_____
Michael H. Finkelstein